

# Weekly Update for Law optional UPSC

A mix of Conceptual, Current/Contemporary Topics

**Date: 21st - 27th May 2023**

1. Electoral reform through SC judgements.....	1
2 . Hate Speech v Freedom of Speech: Ban on Kerala Story.....	2
3. IPR Waiver Proposal By India in TRIPS.....	4
4. Granting Divorce: Novel use of Article 142.....	4
5. International Criminal Court Arrest warrant against Putin.....	6
<b><u>Weekly Focus</u></b>	
6. Case of the week: ONGC v. Saw Pipes Ltd. (2003).....	7
7. Repeated PYQ Model Answer of the Week.....	8

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## 1. Electoral reform through SC judgements

10 key judgments, relating to electoral reform in India:

**1. S. Rangarajan v. P. Jagjivan Ram (1989):** The Supreme Court held that the election of a candidate could be annulled if the candidate or their agents are found guilty of corrupt practices. This includes activities such as bribing voters, promoting hatred among communities, and using religious symbols for campaigning.

**2. Union of India v. Association for Democratic Reforms (2002):** In this case, the Supreme Court directed that all candidates standing for elections must provide details about their assets and liabilities, and their criminal antecedents, if any. This was done in a bid to introduce more transparency to the election process.

**3. Kuldip Nayar v. Union of India (2006):** This case dealt with the legality of certain amendments made to the Representation of the People Act, 1951. The Supreme Court upheld the amendments which removed the domicile requirement for Rajya Sabha members and introduced the open ballot system.

**4. Resurgence India v. Election Commission of India (2014):** In this case, the Supreme Court held that a voter has a right to negative voting by rejecting all the candidates in the fray by exercising the NOTA option. The court ruled that secrecy of the NOTA option must also be maintained by the Election Commission.

The Supreme Court clarified that a voter has the right not to cast his vote at the polling booth and also a right to secrecy of his decision not to vote. The court said that NOTA option is only a device to implement such right and not a right to reject .

**5. Rajbala v. State of Haryana (2015):** The Supreme Court upheld the constitutional validity of Haryana's Panchayati Raj (Amendment) Act, 2015, which prescribed certain educational qualifications for candidates contesting Panchayat (local self-government) elections.

**6. Ashok Pahal v. Union of India (2017):** In this case, the Supreme Court directed the Election Commission to include a column in the nomination form for candidates to declare their sources of income, along with that of their spouse and dependents.

**7. PUCL v. Union of India (2001):** The Supreme Court held that political parties are public authorities and hence, are answerable to the public. Therefore, it is the right of the citizen to know about the antecedents of a candidate, and this right is much more important than the right to privacy of the candidate.

**8. Public Interest Foundation & Ors v. Union of India (2018).** In this landmark judgment, the Supreme Court of India issued several directions to expedite and prioritize the trials of lawmakers (MPs and MLAs).

The court ordered that all such trials should conclude within a year of the charges being framed. If not completed, the reason for the delay must be recorded and a copy of the order must be sent to the Chief Justice of the High Court.

## 2 . Hate Speech v Freedom of Speech: Ban on Kerala Story

The producers of the film argue that the bans violate the right to freedom of expression, which is guaranteed by Article 19 of the Constitution of India. They argue that the bans are based on a preconceived notion that the film is likely to incite violence or communal unrest, and that there is no evidence to support this claim[Hate Speech].

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### Constitutional Provisions

Article 19(1)(a) is part of the Constitution of India and protects the freedom of speech and expression for all Indian citizens. It states:

"19. Protection of certain rights regarding freedom of speech etc. –

(1) All citizens shall have the right –  
 (a) to freedom of speech and expression;"

While this right is fundamental, it is not absolute and can be restricted on the grounds of sovereignty and integrity of India, security of the state, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation, or incitement to an offense, as outlined in Article

19(2).

- **Free speech** is a fundamental right that is enshrined in the Constitution of India. It is the right to express one's thoughts and opinions without fear of reprisal. However, free speech is not absolute

and there are certain restrictions that can be placed on it. One such restriction is hate speech.

- **Hate speech** is defined as speech that attacks a person or group on the basis of their race, religion, ethnicity, national origin, sex, gender identity, sexual orientation, disability, or other characteristic. Hate speech can incite violence, hatred, and discrimination against its targets. It can also create a climate of fear and intimidation that makes it difficult for its targets to participate in public life.

The Supreme Court of India has held that hate speech is not protected by the right to free speech. In the case of **K.S. Puttaswamy v. Union of India**, the Court held that "the right to freedom of speech and expression does not include the right to indulge in hate speech." The Court further held that "hate speech is a form of incitement to violence and hatred and it undermines the very foundation of a democratic society."

### Restricting Free Speech by Hate Speech

In the case of **Rangarajan etc., v P. Jagjivan Ram 1989(2)SCC 574**, it was held by the Supreme Court that in order to restrict free speech, a proximate and direct nexus must be found with any imminent danger to the community. This nexus cannot be far fetched, remote, or conjectural. The Court held that our commitment to freedom of expression demands that it cannot be suppressed unless the situations created by allowing freedom are pressing and the community interest is endangered. The anticipated danger should not be remote, conjectural, or far-fetched. It should have a proximate and direct nexus with the expression. The expression of thought should be intrinsically dangerous to public interests.

### Conflict and Resolution

This is where the conflict between hate speech and free speech arises. On one hand, free speech is necessary for a democratic society because it allows citizens to express their opinions openly. On the other hand, hate speech can cause harm by inciting violence, spreading misinformation, and encouraging prejudice and discrimination.

In the Indian context, hate speech is often prosecuted under various sections of the Indian Penal Code, such as Section 153A (Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony) or Section 295A (Deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs).

The challenge for courts is to balance these two rights - the right to free speech and the need to protect society from harmful speech. The Supreme Court of India has consistently held that restrictions on speech must be reasonable and narrowly tailored, meaning they must be proportionate to the harm they seek to prevent.

### Law commission to Look into it

**Pravasi Bhalai Sangathan v. Union of India (2014)**: This case directly dealt with the issue of hate speech. The Supreme Court of India did not provide a specific definition for hate speech but identified certain provisions in the Indian Penal Code (sections 153A, 153B, 295A, 298, and 505) as safeguards against hate speech. It further ordered the Law Commission of India to examine hate speech laws in India to maintain a balance between the right to freedom of speech and the need for restrictions on hate speech.

### 3. IPR Waiver Proposal By India in TRIPS

India is one of the leading proponents of a proposal to waive certain intellectual property rights (IPR) related to COVID-19 vaccines and treatments at the World Trade Organization (WTO). The proposal, co-sponsored by South Africa and supported by more than 100 developing countries, aims to facilitate the global access and affordability of life-saving medical products during the ongoing pandemic.

#### Legal framework and analysis of TRIPS provisions

The proposal is grounded in the framework of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), which governs IPR in international trade. TRIPS provides for certain flexibilities and exceptions, such as compulsory licensing, parallel importation, and measures to protect public health.

Compulsory licensing allows a government to authorize the use of a patented invention without the consent of the patent holder, under certain conditions. Parallel importation allows a country to import a patented product without the patent holder's authorization, if the product is already being marketed in another country. These measures can be used to address public health emergencies, such as the current pandemic.

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**Law Optional UPSC Result**

 Kritika Goyal AIR 14	 Pallavi Mishra AIR 73	 Subham Jain AIR 152	 Lovish Garg AIR 275	 Animesh Singh AIR 282
 Aditya Pratap AIR 341	 Rashida AIR 354	 Aika Yadav AIR 386	 Virupaksh AIR 392	
 Manav Dhānetiya AIR 734	 Pooja Barwal AIR 806	 Aditya Mahar AIR 839	 Maurya Tej AIR 846	

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The proposal essentially seeks to expand these flexibilities and exceptions, by waiving specific IPR related to COVID-19 products. However, it is not clear how this would be implemented in practice, and what the specific scope and duration of the waiver would be.

#### Arguments for and against the waiver

Proponents of the waiver argue that it would enhance global access to COVID-19 products, by enabling more countries to produce and distribute them. They claim that the current IPR regime is a barrier to such access, particularly for developing countries.

Opponents, on the other hand, contend that IPR protection is crucial for incentivizing innovation and investment in new medical technologies. They warn that a waiver could undermine the pharmaceutical industry and potentially discourage future research and development efforts. Some also question the necessity of a waiver, given the existing flexibilities under TRIPS.

#### Implications of the WTO negotiations

The proposal has sparked intense negotiations at the WTO. If adopted, it could set a precedent for future public health emergencies, and



potentially lead to broader debates on the balance between IPR and public health. However, the opposition from certain developed countries and pharmaceutical companies may hinder its adoption.

The negotiations could also result in a compromise solution, such as a more limited waiver or additional guidelines for implementing the existing flexibilities under TRIPS. Either way, the outcome will likely have significant implications for the global response to the pandemic and beyond.

## 4. Granting Divorce: Novel use of Article 142

Article 142 of the Constitution of India empowers the Supreme Court of India to pass any order necessary for doing complete justice in any case or matter pending before it. This article has been invoked by the Supreme Court in several cases to grant divorce to parties who have been living separately for a long time and have irreconcilable differences.

The use of Article 142 to grant divorce is a controversial issue, but it is clear that the Supreme Court is willing to use its powers to do what it believes is necessary to provide complete justice in cases where couples are seeking to end their marriages.

Here are some of the key points to remember about the use of Article 142 for granting divorce by the Supreme Court of India:

- The Supreme Court has the power to grant divorce in cases where the parties have mutually agreed to divorce and where the marriage has broken down irretrievably.
- The traditional grounds for divorce, such as cruelty, desertion, and adultery, are not exhaustive.
- The Court's decision in this case has been welcomed by many, but it has also been criticized by some.
- The use of Article 142 to grant divorce is a controversial issue, but it is clear that the Supreme Court is willing to use its powers to do what it believes is necessary to provide complete justice in cases where couples are seeking to end their marriages

**Some of the decided cases** where the Supreme Court has exercised its power under Article 142 to grant divorce are:

- **Naveen Kohli vs Neelu Kohli (2006)**: The Supreme Court granted divorce to the husband on the ground of cruelty by the wife, who had made false allegations of adultery and harassment against him. The court observed that there was no possibility of reconciliation and that it was in the interest of both parties to dissolve their marriage.

- **Anil Kumar Jain vs Maya Jain (2009)**: The Supreme Court granted divorce to the wife on the ground of desertion by the husband, who had left her soon after marriage and had not returned for more than 10 years. The court held that there was no hope of resumption of cohabitation and that it would be unjust to deny the wife her right to live with dignity.

- **Rishikesh Sharma vs Saroj Sharma (2017)**: The Supreme Court granted divorce to the husband on the ground of mutual consent, after noting that both parties had been living separately for more than 18 years

and had settled all their disputes amicably. The court waived the statutory waiting period of six months under Section 13B of the Hindu Marriage Act, 1955, and dissolved their marriage by mutual consent.

### **Good Use?**

The use of Article 142 by the Supreme Court for granting divorce has been appreciated by some as a pragmatic and humane approach to deal with matrimonial disputes, while criticized by others as an encroachment on the legislative domain and a violation of the principle of separation of powers. However, it is undeniable that Article 142 has enabled the Supreme Court to do complete justice in cases where the existing laws were inadequate or ineffective.

## **5. International Criminal Court Arrest warrant against Putin**

## **6. Case of the week: ONGC v. Saw Pipes Ltd. (2003)**

ONGC v. Saw Pipes Ltd. (2003) is a landmark judgment by the Supreme Court of India that significantly impacted the arbitration landscape in India. The case is well-known for its interpretation of the "public policy of India" clause as a ground for setting aside arbitral awards under the Arbitration and Conciliation Act, 1996.

The dispute in this case arose out of a supply contract between Oil and Natural Gas Corporation (ONGC) and Saw Pipes Ltd. An arbitral award was made in favor of Saw Pipes, which ONGC challenged in court on the grounds that it was contrary to the public policy of India.

- In its judgment, the Supreme Court held that an arbitral award could be set aside under the public policy ground if it was "patently illegal".
- The court expanded the understanding of the term "public policy of India" to include not only fundamental policy of Indian law and interests of India, but also justice or morality. Importantly, the court held that an award could be set aside if it was in contravention with the provisions of the contract act or any other substantive law governing the parties, or if it was against the terms of the contract.

This expansive interpretation of "public policy" by the Supreme Court in the ONGC v. Saw Pipes case was seen by many as increasing the scope for judicial intervention in arbitration. The decision was controversial as it was perceived as undermining the independence of the arbitration process and the finality of arbitral awards.

However, the Arbitration and Conciliation (Amendment) Act, 2015, later sought to address this issue by narrowing the scope of the public policy ground. The amendment clarified that an award would be in conflict with the public policy of India only if it was affected by fraud or corruption, or it was in violation of fundamental policy of Indian law or the most basic notions of morality or justice. This amendment somewhat mitigated the impact of the ONGC v. Saw Pipes judgment and reinforced the policy of minimal judicial intervention in arbitration.

## 7. Repeated PYQ Model Answer of the Week

**Question:** Define 'high seas'. Discuss in brief the provisions of the convention on high seas. Is freedom of fishing on high seas recognized?

The "high seas" are defined in Article 86 of the United Nations Convention on the Law of the Sea (UNCLOS) as all parts of the sea that are not included in the exclusive economic zone, in the territorial sea or in the internal waters of a state, or in the archipelagic waters of an archipelagic state.

### Convention on the High Seas:

The 1958 Convention on the High Seas was replaced by UNCLOS in 1982, but its main principles continue to guide the interpretation and application of the law of the sea.

Key provisions include:

1. **Freedom of the High Seas (Article 87, UNCLOS):** It recognizes several freedoms on the high seas, including the freedom of navigation, the freedom of fishing, the freedom to lay submarine cables and pipelines, and the freedom to fly over the high seas.
2. **Prevention of Pollution (Article 194, UNCLOS):** It emphasizes the responsibility of states to prevent pollution of the high seas by oil, through discharge from ships or pipelines, or as a result of exploration and exploitation of the resources of the seabed and the subsoil thereof.
3. **Piracy (Article 101, UNCLOS):** UNCLOS provides a definition of piracy and a framework for the pursuit and apprehension of pirates on the high seas.
4. **Rescue at Sea (Article 98, UNCLOS):** It establishes duties for ships to rescue persons in distress and to cooperate in cases of maritime rescue operations.

### Freedom of Fishing on High Seas:

The freedom of fishing on the high seas is recognized under international law. Both the 1958 Convention and UNCLOS recognize this freedom in Article 87(1)(e).

However, this freedom is not absolute. Article 116 of UNCLOS specifies that all states have the right for their nationals to engage in fishing on the high seas, subject to certain conditions.

These conditions include treaty obligations and the rights, duties, and interests of coastal states. Moreover, states are required to take, or to cooperate with other states in taking, measures for the conservation and management of living resources in the high seas under Article 117.

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